Exhibit 1

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December 13, 2017

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<u>VIA ECF</u>

Honorable James Donato
United States District Court
450 Golden Gate Avenue
San Francisco, California 94102

Re: *In re Facebook Biometric Information Privacy Litig.*,
        3:15-cv-03747-JD (N.D. Cal.) and *Gullen v.*
        Facebook, Inc., No. 3:16-cv-00937-JD (N.D. Cal.)

Dear Judge Donato:

I write to clarify a statement I made at the November 30, 2017 hearing on Facebook's renewed motion to dismiss for lack of standing, and to apprise the Court of additional relevant facts that emerged at last Thursday's deposition of plaintiff Nimesh Patel.

I said that Facebook's "disclosures [to users] about tagging have changed over time," that "Facebook rolled out user notifications" about Tag Suggestions "starting in the middle of 2010," and that certain language about facial-recognition technology has been in Facebook's data-use policies "since . . . 2013." Nov. 30, 2017 Hr'g Tr. 25. In fact, since 2010, Facebook's policies have disclosed that Facebook was using information from photos uploaded to Facebook; and since 2011, those policies have informed users that Facebook was using that information to suggest tags.

The Tag Suggestions feature was rolled out in January 2011. Three months earlier, in October 2010, Facebook updated its Privacy Policy to inform users that it "may use information about you that we collect from other Facebook users to supplement your profile (such as when you are tagged in a photo or mentioned in a status update)." Ex. A (FBBIPA_00000925 at 3).

In September 2011, Facebook updated its disclosures to add more detail about the information it collects and how that information would be used in connection with Tag Suggestions. Facebook's Data Use Policy (the successor to the Privacy Policy) notified users that Facebook "use[s] the information we receive about you in connection with services and features we provide to you and other users like your friends . . . . For example, we may use the information we receive about you: . . . to make suggestions to you and other users of Facebook, such as: . . . suggesting that your friend tag you in a picture they have uploaded with you in it." Ex. B (FBBIPA_00000864 at 2).

In June 2012, the Data Use Policy was updated; it continued to contain the language above, but the following sentence was added: "We are able to suggest that your friend tag you in a picture by scanning and comparing your friend's pictures to information we've put together from the photos you've been tagged in." Ex. C (FBBIPA_00000870 at 5).

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In November 2013, the Data Use Policy was updated again to reflect the fact that Facebook was using information from profile pictures, in addition to other photos in which a user had been tagged, to suggest tags: "We are able to suggest that your friend tag you in a picture by scanning and comparing your friend's pictures to information we've put together from your profile pictures and the other photos in which you've been tagged." Ex. D (FBBIPA_00000900 at 5).

This timeline of Facebook's disclosures only confirms that the user plaintiffs have experienced no real-world harm from any violation of BIPA's notice-and-consent provisions. This circumstance was further corroborated by plaintiff Nimesh Patel at his deposition on December 7, where he testified that ███████████████████████████████████████ ██████████████████████████████████ ████████████████████████.

    Sincerely,

/s/ Lauren R. Goldman
Lauren R. Goldman, counsel for Defendant Facebook, Inc.

cc: all counsel of record (via ECF)